



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/09623/2015

THE IMMIGRATION ACTS

Heard at: Stoke-on-Trent  
On: 16<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On: 20<sup>th</sup> May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMML ALNEFATI ALTABIEB  
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr Mills, Senior Home Office Presenting Officer  
For the Respondent: Mr Worrall, Counsel instructed by Deane & Bolton

DETERMINATION AND REASONS

1. The Respondent is a female national of Libya born on 17<sup>th</sup> October 1987. On the 21<sup>st</sup> July 2015 the First-tier Tribunal (Judge Birrell) allowed her appeal against a decision to refuse to grant her leave to remain and to remove her from the United Kingdom pursuant to s47 of the Immigration, Asylum and Nationality Act 2006. The appeal was allowed on human rights grounds, the Tribunal being satisfied that the Respondent's removal would be a disproportionate breach of her right to family life. The Secretary of State now has permission to appeal against that decision, granted by First-tier Tribunal Judge Parkes on the 21<sup>st</sup> October 2015.

2. The background facts, in brief summary, are that Ms Altabieb came to the United Kingdom as a visitor in August 2014. Once here she met, and in November 2014 married, a Mr Mohammad Abdulla Mohammed. Mr Mohammed is a Libyan national who has indefinite leave to remain in the United Kingdom. The parties state that they had at first intended that Ms Altabieb should return to Libya in order to apply for entry clearance to join her husband. Two things changed their minds. The first was the rapidly deteriorating security situation in Libya, and in particular Tripoli; the second was that Ms Altabieb found that she was pregnant. So it was that under cover of letter dated 7<sup>th</sup> January 2015 she made an application for leave to remain 'outside of the Rules' on Article 8 grounds.
3. The Secretary of State refused the application on the grounds that Ms Altabieb did not meet the requirements of the Rules and that there was "nothing to prevent" her from making the journey back to Tripoli over land (it being conceded that she could not fly there, commercial flights having been suspended after attacks at Tripoli airport). The Secretary of State took the view that she could return home and make an application for entry clearance in the normal way.
4. Judge Birrell did not agree. Judge Birrell was referred to evidence that Libya is a "war zone" [at 19]. Ms Altabieb had considered making the journey by land via either Chad or Niger but this would be very difficult [21]. The route through Tunisia was now closed [23]. At the date of the appeal Ms Altabieb was heavily pregnant [18 and 25]. Having heard that evidence, and having had regard to the objective country material placed before her, Judge Birrell found that it would not be reasonable for Ms Altabieb to return to Libya at present. In doing so she noted that there were a number of factors weighing against a grant of leave.
5. Permission was granted on two grounds. The Secretary of State submits that the fact that the (then) appellant was pregnant was not a material factor. The Judge should have focused on whether she could have returned to Libya following the birth in order to make an application for entry clearance. Secondly it is submitted that the Judge has only engaged superficially with the public interest in this case.

### **My Findings**

6. The public interest did weigh heavily against Ms Altabieb. She had come to the United Kingdom as a visitor, and the Rules contained an in-built 'no switching' provision, for which there are sound public policy reasons. She had embarked on a relationship when her status was precarious. She had made use of the services of the NHS to which she was not entitled. Her husband was unable to support her since he was only earning £80.00 per week working part-time in a

pizza restaurant and there was nothing to suggest that his employment prospects would be any better in the future. She did not meet the requirements of Appendix FM. She cannot speak English. All of these factors cumulatively meant that there was a substantial weight to be attached to the public interest in this case. That much is uncontroversial. The Secretary of State cannot however demonstrate that these were matters that the First-tier Tribunal Judge excluded from her consideration. As Mr Mills very realistically conceded, they are all matters expressly addressed in the determination, in particular at paragraphs 36 and 37. Ground 2 is therefore not made out. It cannot be said that this constituted a “superficial” assessment of the public interest since the Secretary of State has not managed to identify any factor which should have been considered that has been omitted. The public interest appears at the forefront of the Tribunal’s analysis.

7. Ground 1 appears to suggest that the Tribunal had impermissibly treated two factors as determinative: the fact that Ms Altabieb was pregnant, and the fact that she could no longer fly direct to Tripoli. There is no support for that proposition in the determination itself: paragraph 43 records that the Tribunal has taken all factors into account in reaching its finding that there are “compelling reasons” as to why leave should be granted. What can be said is that these were important features of the evidence. The fact that Ms Altabieb would have to navigate her way overland via Chad or Niger – either with or without her British baby- into Libya where the situation was “clearly highly volatile” was demonstrably relevant. If the Secretary of State is looking for exceptional circumstances these were surely it.

### **Decisions**

8. The decision of the First-tier Tribunal does not contain any error of law and the decision is upheld.
9. I was not asked to make a direction for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce  
16<sup>th</sup> May 2016